

# Narrowing the Gaps among Workers: Changes in Korea

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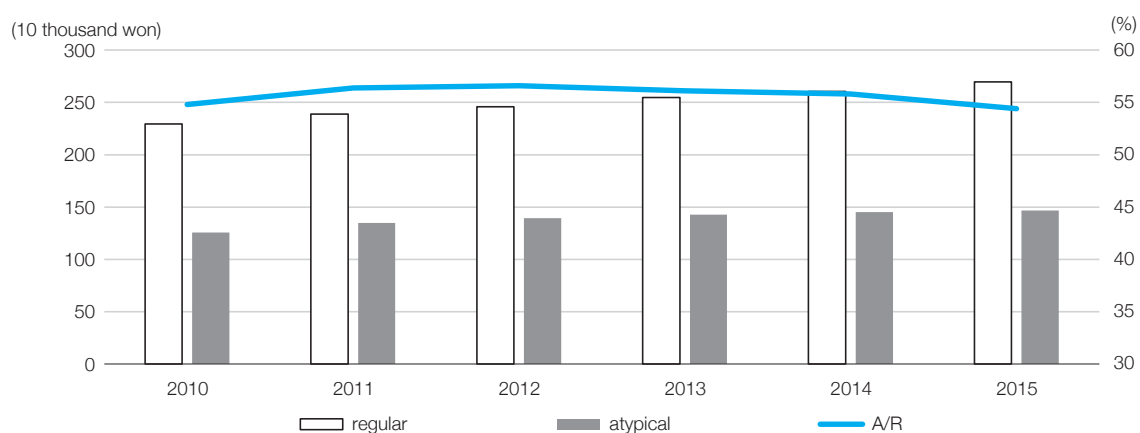
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## I. Introduction

Recently we are facing dramatic changes over the whole area of society in Korea. Both in economy and politics, we are experiencing many changes which inevitably affect policies and legal responses concerning labor relations and working lives. We can analyze the present situation from various points of view. At the same time, partly because of traditional hardships such as unemployment or economy crisis, and partly because of new wave of technological innovation such as ubiquitous society or IoT, we need to think of other possibilities of regulations. Situation is just the same in Korea.

### 1. Economic/social background

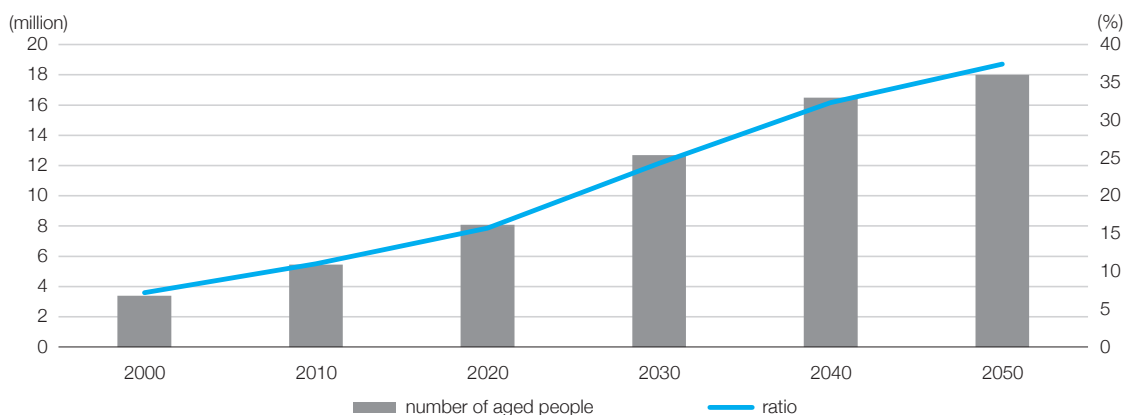
Among the many changes we have been faced with, I would like to introduce two features: working system and population ratio. Two grand financial crisis (1997 and 2007) gave rise to relatively deregulated labor market unavoidable, including flood of atypical workers. Legislation of fixed term and part-time employment contract (2007), temporary agency work (1998) were made during this period. From the very beginning of these new regulations, there had consistently been worries about the influences, in mainly bad ways. Atypical workers are increasing, and they are suffering from undergoing traps of unsatisfactory jobs as a whole. Social polarization is enlarged, making two extremes of society.



Source: Statistics Korea.

Note: The line chart shows wage gaps between regular and atypical workers (right scale).

Figure 1. Wages of regular and atypical workers



Source: Statistics Korea.

Figure 2. Trends in number of aged people and its ratio

Aging society is also big issue in Korea. The rapid aging of society suggests many problems including reform of social security system. We are expecting deficiency in labor power, however for now unemployment rate is very serious. As of December 2017, unemployment rate was 3.3%, while youth unemployment rate was 9.2%. With not so many decent workplaces for the young people, self-employed business could be an alternative. The ratio of self-employed among the whole working population in Korea is 26% (men) and 14% (women), both over the average of OECD countries (17% and 10% respectively, *OECD Entrepreneurship at a Glance 2017*). However, it seems that they do not have much possibilities of success. About 71% of self-employed persons are quitting their business in five years (Statistics Korea). We cannot deny that we are at the crossroad for the labor and social security policies.

With social polarization and aging society, there had been some legislations and policies such as protection of part-time workers' overtime work, three times as much compensations as the difference to the atypical workers for the intentional discrimination (part-time workers, fixed term workers, and temporary agency workers). Making the period of unemployment benefits, compensating commuting accident as an industrial accident are also major legal responses to changing society.

## 2. Political reformation and changes in labor policies

After the impeachment in March 2017, new president was elected in Korea. New president had been in the presidential office during the years of President Roh (2003-2008), and worked for the progressive party. Naturally, in the field of labor relations and regulations, new government is seeking for revolutionary reformations. New government set five goals of governance, 20 national strategies and 100 policy tasks to achieve them, which include many of labor/social security issues. Main features are as follows:

Goal of "An economy pursuing co-prosperity," strategy of "Fostering a job-creating economy for income-driven growth." Tasks are: to create quality jobs meeting the expectations of the public; to build an infrastructure for social services and create jobs; to strengthen support for workers to better prepare for unemployment and retirement; to promote innovation in the service industry to create decent jobs; to strengthen employment assistance tailored to age and gender. Goal of "A nation taking responsibility for individual lives," strategy of "Providing inclusive welfare." Tasks are: to provide customized social welfare guaranteeing a basic standard of living; to guarantee a healthy and decent life for the elderly in preparation for an aged society; to enhance coverage of the national health insurance and support for preventive healthcare; to enhance healthcare in the public interest and provide patient-oriented medical services; to promote affordable housing for low and middle income workers. Strategy of "Fostering a fair society that respects labor and promotes gender equality."

Tasks are: to realize a society where labor is respected; to create a healthy and discrimination-free workplace; to support various disadvantaged families to stabilize their lives and address discrimination; to achieve de facto gender equality society.

Besides these tasks, we have more goals concerning social security and fair market competition, etc. that suggest tasks for new government. These tasks are a good effort to narrow the gaps among people, making jobs for unemployed people to work, getting rid of discriminations, searching for the strengthening social safety net. As a matter of fact, revisions in the Labor Standards Act (2018, mainly about working time. Reducing working time, setting limitation of weekly working time clear, guaranteeing public holidays, 11-hour interval for rest in some jobs, etc.) have been made. Minimum wage of 2018 sharply rose by 16.4%, which was the obvious biggest increase compared with 2.8%-8.3% for the last 10 years. We are waiting for revisions in collective labor law, too. On the other hand, without waiting for the legal revisions, measures in policy making level are very active. For example, there have also been significant movements to change atypical workers into regular employees in public sector.

Actually, new government set a committee for constitutional amendment which took a lot of chances of public opinion hearing as well as consulting professionals. Presidential office proposed a bill for constitutional amendments in March 2018, which included determination of working conditions by worker and employer on the basis of equality, enlarging the scope of the right to strike, enlarging the constitutional rights of labor to public officials, duty to effort for the “equal pay for equal work,” duty to operate the policies to enhance work-life balance on the area of labor policies. However, all parties except the ruling party opposed to this amendment bill, consequently was declared void at the national assembly due to a lack of quorum.

With these flood of policies that are now moving, we would like to review one recent case about temporary agency workers, so called “Paris Baguette illegal agency work case.”

It is very interesting in the sense that they tried to approach and handle the case by administrative supervision over the illegal agency work. We had similar cases associated with the same law for the last 20 years. However, in reality, there rarely had been this kind of intervention, therefore whether this attempt can handle the case or not was a good test board for a different way of legal execution and compliance.

It is also worthy of being paid attention to, because its structure is a little different from typical dispute about temporary agency workers in Korea. Usually we have three actors in temporary agency work; however, we have one more actor here, and the traditional characteristics of employment relations are substituted by SNS.

This was a case covered partly the issues of atypical workers, indirect employment, discrimination, the concept of the employer, and the procedure leading to the solution was very unique.

## **II. A case study: The present situation, changes, and responses**

### **1. What happened?**

Paris Baguette is a famous franchise bakery brand. SPC Group owns the brand which has over 3,300 bakery stores all over Korea and some abroad. The franchisees could hire bakers or bake themselves. Nevertheless, because of high quality required by the franchise headquarters (FH), most stores used bakers professionally trained by the FH.

What is important here is that, the FH directly supervised, ordered and controlled the bakers employed by the Partner Firms. For example, they ordered each baker to make designated cake or bread at the designated time. The FH usually gave these orders by text messages or SNS. The FH was also involved with the Partner Firms’ hiring process. The Partner Firms sent the bakers to franchisees’ bakery stores. There were 11 Partner Firms and they were mainly run by retirees from the bakery chain. For eight out of 11 Partner Firms, their only business is to manage bakers for Paris Baguette stores. These bakers are working at franchisees’ stores; however, they are paid by the Partner Firms whom they are employed by. For the wages of the bakers, there was no room for franchisees to handle.

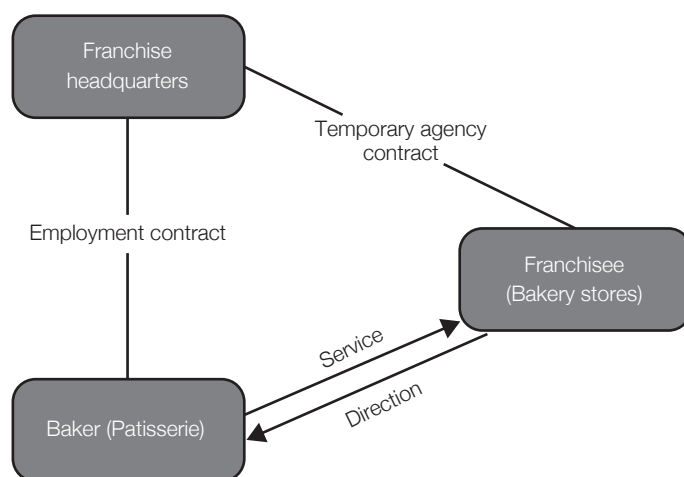


Figure 3. Traditional structure of temporary agency work in Korea

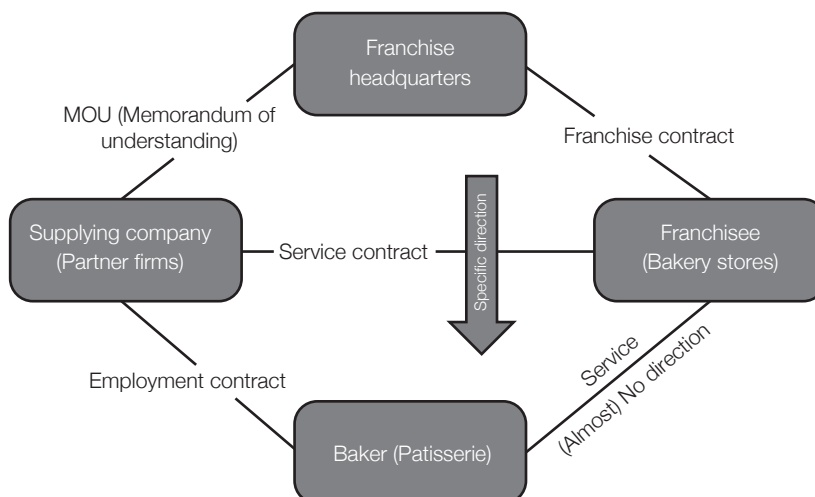


Figure 4. Bakers' contractual relations of Paris Baguette franchise

The baking process was a little further than McDonaldization. Although all the frozen materials were delivered from the FH, each baker should bake according to the recipes they were trained by the FH. There were only about 100 bakers employed by the FH, working at the store operated by the FH directly. (These stores were usually referred to as “Paris Croissant” to distinguish themselves from “Paris Baguette.”)

The FH provided detailed and specific directions and supervisions every single day. Operation management, human resource management, quality supervision, hygiene check and performance evaluation were all the role of QSV (Quality Supervisor) employed by the FH. For example, QSV ordered the exact time of a particular cake on a specific morning. CEO of the FH was always walking around the franchisees' stores, and called to the FH QSV at any time for the orders. If he found that there was no fresh pie at 1:30 p.m., then the FH will send a text to all the bakers to arrange for the production time of the pie, eventually leading to bakers' early start of work. Length of a bread, arrangement of fruit on the cake, cleaning of the air conditioner, decorating banner for the Christmas season were all reported to QSV by each baker. As is often the case, each baker was required to report via mobile messenger attaching the pictures he/she has taken.

## 2. What the government (MOEL) did

The Ministry of Employment and Labor (MOEL), which has the right of supervision and judicial police power on the matter of labor law violation, found that Paris Baguette was concerned with illegal temporary agency work in September 2017. MOEL made a corrective order requiring direct employment by the FH after on-site inspections at 68 locations. These inspections were performed at the FH, Partner Firms (supplying companies) and franchisees' stores. The FH was ordered to directly hire 5,378 bakers working at 3,396 franchisees' stores. MOEL also told that if the FH would not follow the corrective order, then an administrative fine of 10 million KRW (under 30 million KRW is possible, Act on the Protection, etc. of Temporary Agency Workers: APTAW, Art.46, para.2) would be imposed per baker as well as further investigation by the Public Prosecutor's Office would be requested.

## 3. End of the story

Four months after the administrative order to the FH to directly employ all the bakers, the FH and two national trade union centers (FKTU and KCTU) made an agreement on the issue. They decided to make a subsidiary company (the FH owns 51% of shares), which will employ all the bakers. CEO of this company would be an executive of the FH. Bakers to be employed by new company will get the same fringe benefits as the FH immediately, while gradually making the same level of wages in three years. Moreover, the FH, association of franchisees, and two national trade union centers will make a council for better treatment and working conditions.

## III. Possible answers: Legal responses

### 1. Regulations

Temporary agency workers or dispatching workers are regulated by Act on the Protection, etc. of Temporary Agency Workers in Korea. In principle, we have some particular jobs that temporary placement of workers is permitted by Presidential Decree (Art.5, para.1). However, if a vacancy occurs due to child birth, an illness, injury, etc. or there is a need for temporarily or intermittently secure manpower, temporary work agency business may be conducted (Art.5, para.2). In principle, the employment period of a temporary agency worker shall not exceed one year, and another year is permitted with the agreement among the temporary work agency, the user company and the temporary agency worker (Art.6).

The user company owes the duty to employ the temporary agency worker when he/she used the temporary agency worker on the jobs which are not permitted to use, or exceeding the designated period, or take the temporary agency worker from temporary work agency which did not get adequate business permission. This duty to directly employ the temporary agency worker shall not apply where the relevant temporary agency worker clearly expresses his/her dissenting opinion, or a justifiable ground prescribed by Presidential Decree exists (Art.6-2).

Concerning working conditions for the temporary agency worker, temporary work agency as well as user company should not give discriminatory treatment, on the ground of his/her employment status compared with other workers engaged in the same or similar kind of duties at the business of the user company (Art.21).

### 2. What can be done?

With these regulations, user companies are restricted to use temporary agency workers for the limited job list, and this makes user companies rather choose outsourcing contract or supplying contract than employment contract, because they would like to make flexible labor arrangement depending on the economic changes. Thus main concern in Korea till now has been focused on the directions and controls by the users of the companies that temporary agency workers actually gave their labor at. This has been the world where three actors (agency, user and worker) were playing, and workers were arguing against two actors.

Now we have one more character. From the case above, making the FH employ all the bakers could probably be an answer by the present law. Temporary agency work is not allowed because bakers are not the jobs allowed by the present law.

We also have the world that employees are working at the store, directed by the FH through SNS. At first, the agency was very clear, while the entity which orders and directs the employees was not that clear from the traditional point of view. They were working at the franchisees' store, sometimes directed by the franchisees' store owner, which made the position of franchisees' store owner very ambiguous.

The FH argued by citing the Franchise Business Promotion Act (FBPA), which regulate mainly fair market function about franchise headquarters and franchisees. Here the definition clause says the term "franchise business" means a continuous business relationship, in which a franchise headquarters allows its franchisees to use its own trademarks, service marks, trade names, emblems, or any other business marks (hereinafter referred to as "business marks") and sell commodities (including raw materials and supplementary materials) or services in conformity with certain quality standards or certain business methods, provides them with supports for and education on business management and business activities, and controls their business operations, and franchisees pay money to the franchise headquarters in return (Art.2). Nonetheless, MOEL translated that what the FH did was over the line of the support for and education, controls their business operations that FBPA regulates.

In this case, they agreed on the solution of new company instead of direct employment, which some of the bakers really hoped. Can this be an alternative? We need a little more time to consider this issue. We can also find that the gaps between/among workers were to be narrowed in two senses.

First, the wage gap between regular workers and atypical workers were to be narrowed in three years. This is a meaningful step considering the trend of polarization and on-going two extremes between regular/atypical workers. As we touched, the wage gaps between regular/atypical workers in Korea is serious, while the agreement at this specific bakery franchise company could be a good inspiration to handle this problem.

Second, and more importantly, workers found themselves got together, united, and they succeeded in making collective bargaining with the FH. They were scattered, doing his/her own job at each franchisees' bakery store, yet the very means to direct and regulate them (i.e. SNS message tools) made them associated with each other and gather their opinions, express their voices. This is also one more feature of narrowing the gaps among workers which formerly existed.

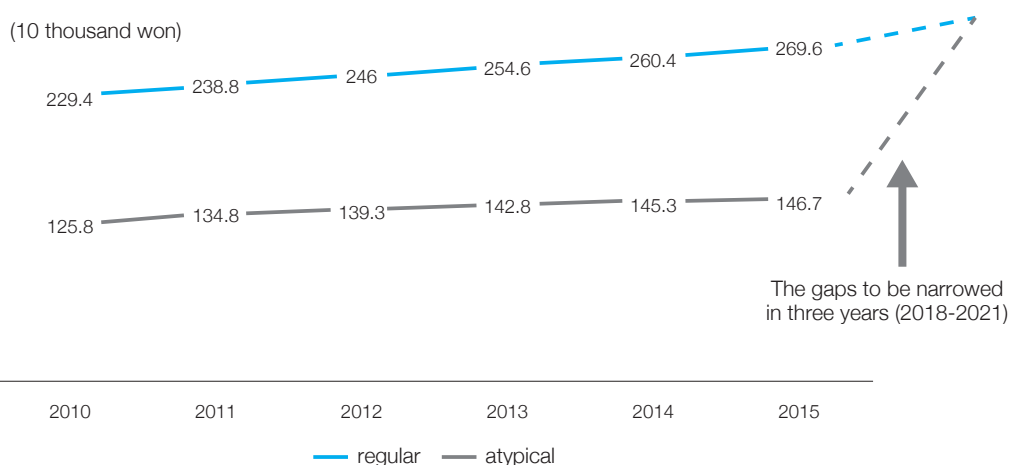


Figure 5. The effect of the agreement on narrowing gaps at Paris Baguette (considering general gaps between regular and atypical workers as a whole)

#### IV. Conclusion

Now we have another legislative actions such as protection of indirect employment, limitation of using fixed term employment, making clear the range of minimum wage. As a matter of course we are deliberating on the big picture of industry 4.0 and its effect on labor relations as is the case with many other countries.

With all these situations, we are in a position to choose a better way to cope with pending issues. Governmental intervention can be a solution, while we are continuously searching for good ways to hear the voices of working people and employers, to communicate one another, so that we can adequately reflect genuine intent of both (in many cases more than both) parties to the labor relations and its regulations.

Also traditional thoughts about union is not so efficient to cover new types of work style. In the case presented above, enterprise level union did not exist. Instead, national trade union centers played a key role. From the viewpoint of the bakers' working style and places, it would be a better choice, which would inspire collective labor relations in Korea so much.

Not only traditional area of labor law, but also the regions that were regarded as not our field are becoming labor issues crossing the border. New frontiers that have never been traveled in front of us are waiting for our new approach.



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